



January 28, 2010

**VIA ELECTRONIC & OVERNIGHT MAIL**

Michael A. Bernstein, Esq.  
The Upper Deck Company, LLC  
5909 Sea Otter Place  
Carlsbad, CA 92010

Dear Mr. Bernstein:

Reference is made to License Agreement Nos. ML-2302H (the "Domestic Trading Cards Agreement"), MLI-115B (the "International Trading Cards Agreement"), ML-4055C (the "Hall of Fame Trading Cards Agreement"), ML-3940B (the "Hall of Fame Authentication Program Agreement") and ML-2949F (the "MLB Authentication Program Agreement") (collectively the "Agreements"), between The Upper Deck Company, LLC ("Upper Deck") and Major League Baseball Properties, Inc. ("MLBP"). Any capitalized terms not defined herein shall have the meaning ascribed to them in the Agreements.

It has come to our attention that Upper Deck has produced, and is advertising and distributing trading cards (the "Unauthorized Products") depicting the names and likenesses of current and former Major League Baseball players in uniform featuring, without the authorization of MLBP and/or the Clubs, certain of the MLB Marks, including Club logos and trade dress (including, without limitation, Signature Stars and Ultimate Collection), despite the fact that the Agreements have expired. Upper Deck's manufacture, offering for sale and/or sale of the Unauthorized Products bearing the MLB Marks is likely to cause confusion, cause mistake, and deceive the public, who are likely to believe that Upper Deck's goods and services have their origin with, or are approved, endorsed, sponsored by or associated in some way with, MLBP and/or the Clubs, particularly because Upper Deck was formerly a licensee of MLBP and the Clubs.

Upper Deck's manufacture, offering for sale and/or sale of the Unauthorized Products constitutes trademark counterfeiting, trademark infringement, trademark dilution, unfair competition and/or false designation of origin in violation of federal statutory law, state statutory law and/or common law. It also constitutes a breach of the surviving terms of the Agreements (including, without limitation, Paragraphs 13(A), (B), (D), 15, and 17). Specifically, and without limitation, Upper Deck agreed in Paragraphs 13(B) and 15(A) of the Agreements that it would not make any unauthorized use of the MLB Marks (which include the Club logos) and would not use the MLB Marks in any manner other than as licensed under the Agreements. Upper Deck also acknowledged in Paragraph 12 of the Agreements that the publicity and goodwill associated with the MLB Marks belongs exclusively to MLBP and/or Licensor Indemnitees.

Upper Deck agreed in Paragraph 18 of the Agreements that its failure to perform any of the terms or conditions of the Agreements would result in immediate and irreparable damage to MLBP.

Accordingly, MLBP hereby demands that Upper Deck take the following action immediately upon receipt of this letter:

1. cease and desist from the manufacture, distribution, advertising, offering for sale, and sale of the Unauthorized Products;

**MAJOR LEAGUE BASEBALL Properties**

245 Park Avenue

New York, New York 10167

Phone 212.931.7900

[www.mlb.com](http://www.mlb.com)

2. send to my attention a written statement indicating the number of units of Unauthorized Products that Upper Deck has produced, the gross revenues received from sales of the units of the Unauthorized Products, and the net sales price of each sale of the units of the Unauthorized Products;
3. advise all entities to whom Upper Deck distributed the Unauthorized Products that they may not offer for sale, sell or otherwise distribute the Unauthorized Products;
4. arrange for all units of the Unauthorized Products to be sent to me; and
5. cease and desist from any further unauthorized use of MLB Marks.

Further, MLBP is herewith attaching as Exhibit 1 hereto a list of Upper Deck's Licensed Product submissions to MLBP during the License Periods of the Agreements which were not approved by MLBP as required by Paragraph 10 of the Agreements. These products were nevertheless released into the marketplace by Upper Deck (the "Unauthorized Licensed Products"). Such Unauthorized Products represent an additional unlawful use of the MLB Marks, as well as breach of the Agreements, and MLBP reserves all rights in connection therewith.

MLBP also hereby demands a statement from Upper Deck indicating the number and description of all Licensed Products produced under the Agreements which were shipped to Distributors since January 1, 2008.

With respect to the other continuing defaults by Upper Deck under the Agreements, Upper Deck has agreed<sup>1</sup> that it owes to MLBP:

1. \$20,920.00 in connection with past-due payments for 2009 MLB All-Star FanFest sponsorship fees and interest due to MLBP pursuant to the Domestic Trading Cards Agreement;<sup>2</sup>
2. \$2,785.39 in connection with past-due payments and interest payable to MLBP and associated with Authentication Program sessions provided pursuant to the Hall of Fame Authentication Program Agreement and the MLB Authentication Program Agreement;
3. \$2,632.50 in connection with past-due payments and interest due to MLBP pursuant to Schedule O, Advertising, Marketing & Promotion of the MLB Authentication Program Agreement;
4. \$893,777.68 in connection with unpaid 2009 Advance and Guaranteed Compensation and interest due to MLBP pursuant to Schedule K, Advance and Guaranteed Compensation of the Domestic Trading Cards Agreement;
5. \$155,649.99 in connection with unpaid 2009 Advance and Guaranteed Compensation and interest due to MLBP pursuant to Schedule K, Advance and Guaranteed Compensation of the International Trading Cards Agreement;

<sup>1</sup> MLBP considers such acknowledgement and agreement by Upper Deck to be a binding admission and relies thereon.

<sup>2</sup> Pursuant to Paragraph 4(G) of the Agreements, any late payment shall require Upper Deck to pay MLBP, in addition to the amount due, interest (accruing at the time such obligation was first owed) at one percent (1%) per month or the highest prime lending rate of JP Morgan Chase Bank, whichever is greater, on the amounts delinquent for the period of the delinquency. For all amounts listed herein, interest was calculated through the Tuesday, November 24, 2009 at the rate of one percent (1%) per month. It is understood that Upper Deck will pay to MLBP the amounts owed plus interest calculated through the eventual payment date.


6. \$5,265.00 in connection with MLBP's cooperative advertising and retail marketing funds and interest pursuant to Schedule O, Advertising, Marketing & Promotion of the International Trading Cards Agreement;
7. \$71,694.50 in connection with unpaid 2009 Advance and Guaranteed Compensation and interest due to MLBP pursuant to Schedule K, Advance and Guaranteed Compensation of the MLB Authentication Program Agreement; and
8. \$12,233.76 in connection with unpaid 2007, 2008 and 2009 Royalties and interest due to MLBP pursuant to Paragraph 4 and Schedule L, Royalties of the Hall of Fame Authentication Program Agreement.

As such, MLBP hereby demands immediate payment of the foregoing amounts.<sup>3</sup>

Further, MLBP is owed: \$89,660.21 in connection with past due payments for 2006 cooperative advertising and retail marketing funds, the cost of the 2006-2007 audit and interest due to MLBP pursuant to the Domestic Trading Cards Agreement; \$29,436.89 in connection with unpaid 2009 Advance and Guaranteed Compensation and interest due to MLBP pursuant to Schedule K, Advance and Guaranteed Compensation of the Hall of Fame Trading Cards Agreement; \$840,000.00 pursuant to Schedule O, Advertising, Marketing & Promotion of the Domestic Trading Cards Agreement;<sup>4</sup> and \$341,769.00 for monies expended directly by MLBP in connection with MLBP's cooperative advertising and retail marketing funds pursuant to Schedule O, Advertising, Marketing & Promotion of the Domestic Trading Cards Agreement. In an effort only to clarify our position MLBP has provided further support for its demands (in the form of detailed explanation for its calculations of the above listed amounts) in the attached Exhibits 2-5, respectively. We hereby demand immediate fulfillment of all such obligations, as per the terms of the Agreements.<sup>5</sup>

The statements in this letter do not constitute a full and complete statement of the facts of, or MLBP's rights with regard to, this matter. Nor do such statements constitute a waiver of any legal or equitable rights, remedies, and/or defenses, all of which MLBP expressly reserves.

Sincerely,

  
Jennifer R. Simms  
Senior Counsel

cc: Ethan Orlinsky, Esq.

<sup>3</sup> MLBP acknowledges that it has just received the periodic statements purportedly for November and December 2009 for the Domestic Trading Cards Agreement, and for May, June, November and December 2009 for the International Trading Cards Agreement, the Hall of Fame Trading Cards Agreement and the MLB Authentication Program Agreement. MLBP has not yet been able to review the reports for form or content, but demands to be paid all amounts shown as due and owing therein, plus any applicable interest.

<sup>4</sup> Upper Deck has agreed that, as of January 22, 2010, it had paid only the following Clubs pursuant to its 2009 Club-specific marketing agreements: (a) \$30,000 to the Boston Red Sox and (b) \$30,000 to the Detroit Tigers. It is MLBP's position that Upper Deck owes each Club \$30,000 pursuant to the Agreements. Exhibit 4 is provided merely to show what MLBP understands was not provided and what value we attribute to those items.

<sup>5</sup> To the extent that Upper Deck has both approved and unapproved product leftover in its inventory, MLBP hereby demands that Upper Deck ship all remaining Licensed Products over which Upper Deck currently has control or may be able to control (including, without limitation, the Licensed Products listed in Exhibit G of Upper Deck's January 11, 2010 letter), at Upper Deck's expense, pursuant to Paragraph 17 of the Agreements, to: Warren King, c/o Suncoast Shipping Containers, 2/3 Bream Road, Attalong Beach, NSW 2257, Australia, using our forwarder: BTX Air Express Orange County, 12621 Chadron Avenue, Suite C, Hawthorne, CA 90250. Contact: Dave Kemmer.

Howard Smith

Megan Walsh

Bernd Becker, *Upper Deck*

Richard McWilliam, *Upper Deck*

John Zimmer, *Upper Deck*